

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEVON KINCAID,

No. C 14-00025 YGR (PR)

Petitioner,

ORDER OF DISMISSAL

v.

CONNIE GIBSON, Warden,

Respondent.

Petitioner, a state prisoner, filed this *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

Petitioner has filed a previous petition for a writ of habeas corpus with this Court, challenging the same conviction and sentence. *See* Case No. C 07-0608 SBA (PR). The Court denied the first petition on the merits.

DISCUSSION

The Court finds the present petition is a second or successive petition attacking the same conviction and sentence as Petitioner's prior federal habeas petition. A second or successive petition containing new claims may not be filed in the district court unless Petitioner first obtains from the United States Court of Appeals an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Petitioner has not done so. Accordingly, this petition is DISMISSED without prejudice to filing a new habeas action if Petitioner obtains the necessary order.

CONCLUSION

For the foregoing reasons, the petition is DISMISSED pursuant to 28 U.S.C. § 2244(b).

The Clerk of the Court shall enter judgment, terminate as moot all pending motions, including Petitioner's Motion to Stay (Docket No. 3), and close the file.

IT IS SO ORDERED.

DATED: January 31, 2014


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE